Canada's Suzerainty Over the West

An Indictment

of

The Dominion and Parliament of Canada

for

The National Crime of Usurping the Public Lands

of Manitoba, Saskatchewan and Alberta

contrary to

Canada's Constitution and the Law of the Land

Presented at

The Bar of Public Opinion

By Bram Thompson, M.A., Barrister-at-Law
Regina, Sask.

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REGINA

This Indictment, with all the historic facts and Constitutional Law on which it is based, is fully set out in the two Articles appended hereto which are published in the August and September issues of the CANADIAN LAW TIMES. For the benefit of the people at large they are now reprinted.

In brief, the Indictment is that the Dominion has usurped the entire North West Territories; and subordinated to the rest of Canada, the new Provinces carved out of them in deliberate violation of the British North America Act, 1867; and that the Parliament of Canada has, through all the years since the Territories entered the Confederation, abused, distorted and perverted the Specific Trust Powers reposed in it by the Imperial Government, designedly and deliberately, to carry out and consummate this truly nefarious scheme—a scheme as base, selfish, and sordid as

is anywhere to be found in the annals of autocratic tyranny.

It is a formidable Indictment; and irate tongues will promptly plead against it, Burke's famous aphorism that it is " impossible to indict a Nation."

My answer is that such a plea would be characteristic of that identical sophistry which has produced, or contributed to, the ruinous circumventions and distortions of our Constitution which I challenge and impugn, one by one, in the following Articles.

This Indictment is not against the Canadian People. They have been duped into a phantasmagoria, and cozened and cajoled into a belief in its reality. If I disillusionize them I do not pretend to do so by magic or necromancy; but by the concentric forces of Law and Logic.

The Canadian People are the sole and final Arbiters of the destiny of their country; and, after proving beyond all possibility of refutation the heinous national crimes stated in the Indictment, to them I make my appeal for Right in full confidence that the confluence of Truth and Justice, as radiated from these Articles, will meet in them; and that they will promptly accord to the Provinces of Manitoba, Saskatchewan and Alberta, as well as the rest of the Great West, all that both Truth and Justice demand,—not only in the restoration of their lands and the restitution of their Rights, but in generous amends for the spoliations to which they have been subjected.

Every Canadian, East and West, is concerned in the maintenance, inviolate, of the superb Constitution provided for his country by the B. N. A. Act 1867. And no Canadian, worthy of the name, would desire to see his country emerge as a Nation other than it was designed and created as a Dominion—an agglomeration of individual Land-owning Entities, independent *inter se,* but relegating to a Unity of themselves matters of Government, legislation and administration common to the welfare of them all.

This is all the Confederation was until it was distorted in the way stated in the Indictment; and all that it is even now in intention and in truth. The Equality and Independence of each Province are the kernel and heart of the whole system.

For ever may it be so, whether Canada be a Dominion or a Sovereign Nation!

But let not that patriotic wish obscure the obnoxious fact that if the Dominion emerged into a Sovereign Nation now the Provinces of Manitoba, Saskatchewan and Alberta would be subordinate to the rest of Canada, as the inevitable consequence of the degradation to which they have already been subjected through the usurpation, by the Dominion, of their Land, and, by the Parliament of Canada, of their Legislative Rights over it.

The Canadian People must be well aware that the West would not submit to this subordination. It has submitted too long already.

Why should Quebec or Prince Edward Island own, or have any proprietary interest in, the lands and natural resources of Manitoba, Saskatchewan or Alberta? And why should the Provincial Governments of these Western Provinces be merely sublunaries of the great magnates glowing aloft, East and West of them—magnates claiming to own and be Suzerains over the very soil upon which even the Parliament and Public buildings of these Western Provinces are constructed?

A reincarnation of some of the Pharaoh race must have concocted the fiendish scheme, and projected it upon the Canadian People just at the threshold of their consolidation. No man imbued with the principles of Free Nationhood could have devised it except as an Apple of Discord which was designed to mature into a rupture.

It is the aim of these Articles to prevent it from so maturing by consigning it to the Flames.

Poltroonic palaver and prevarication will no longer soothe but irritate the West; and the Canadian People must face the reality and recognize that, by longer leaving this National Crime unpurged and unredressed, they are sowing Dragons' Teeth which one day may spring up as Armed Men. As armed men the evils already sown would spring up to-morrow, if as it stands to-day, arrayed in the vesture of a grand Suzerain over the West, the Dominion evolved itself into a Sovereign Nation; for then the patient hope of ultimate rectification would be finally extinguished by the passing away of the Imperial Authority and the long-ignored restraints of the B. N. A. Act 1867.

The West would never bend its neck to such a Yoke; and why should it bend its neck now to what is even more obnoxious—a self-constituted autocrat whose only pretence for hanging the collar of servitude upon it, is derived from aggression upon, and usurpation of, the Lands and Rights of the West itself?

MEN OF CANADA see to it that right is now done in the interest of yourselves and of your common country!

AND MEN OF THE WEST remember that the removal of your degradation—the recognition of your equality and not your subordination—is the key-note of the quick redress of the manifold other injustices, fiscal and financial, to which you have been subjected by a Parliament that has ruthlessly despoiled you of your natural sources of wealth and revenue, and made you, in violation of its trusts and powers, subservient to your co-patriot Provinces of the Dominion—hewers of wood and drawers of water for the Household of the Grand Suzerain of Ottawa!

It is all a foul incubus. Hurl it off!

You have been deluded into the cringing attitude so long that it is beginning to wear the aspect of submission. It has produced you nothing but long parades of promises which lie moulded and broken around you in heaps of debris.

Cease, then, to beg for what is your own; and say to the Dominion and Parliament of Canada:—

The Pibroch has sounded! The Great Western Plain
Now sends forth its whoop of defiant disdain.
Stay! Stop you Usurper! Scurry quick from our Land
Which you've trod under heel like a Suzerain Grand.
Our Lands are not yours. By right they are ours
Tho' them you've usurped by perverting your powers.
But no longer we'll parley with perfidy base;
And no longer we'll bow to a Tyrant's Ukase.
So that Clank of your Heel! Cut it out from the West!
Yes this is our mandate and urgent behest!!

CANADA'S SUZERAINTY OVER THE WEST.*

None of the works on the Constitution of Canada contains a word on the competence of the Parliament of Canada to create in this country a *dominium in dominio*. It may be the Constitutional writers took it for granted that such a thing could not be legally done. But that is merely glossing a fact into obscurity by an assumption; and it is the aim of this article to remove the gloss and lay bare the reality in all its nakedness.

The Parliament of Canada, avowedly under powers conferred upon it, has established in the North-West Territories the three new Provinces of Manitoba, Saskatchewan and Alberta, and it has, at the same time, divested them of their land which is held and administered by the Dominion Government for the purposes of Canada.

If this is legal then the Federal character of the Dominion is destroyed. The new provinces are not provinces of Canada except in name; they are subordinate organizations; the Dominion Government is their Grand Suzerain; and the Dominion itself is their Sovereign and not the King in right of his Imperial Crown.

We have here a problem vital and momentous; and for clearness I state it historically.

I. Historical Facts.

The scheme of the B. N. A. Act, 1867, was to confederate the then existent colonies of British North America on a basis of equality of status and rights.

To facilitate and promote this aim, the colonies themselves abandoned their charters, and as nude Entities, except that each retained its own institutions and laws as they then were, they entered the union and became instantly provinces of the Dominion of Canada invested with the status and autonomous rights

* Article in *Canadian Law Times*, August, 1919.

prescribed by the Act; while the residuum of legislative and governmental power common to all, and over and above that conferred on them individually, was simultaneously reposed in the Dominion, which by their union they formed, and in its Parliament—the Parliament of Canada.

This Dominion was designed in the fullness of time to become a Sovereign Nation. But pending the evolution it was under the structure of the Confederation, unable to assert any dominance over its constituent provinces. It was restrained in this way:—

First as regards Legislation and Government.

The Dominion and the provinces were designedly kept apart and independent. Each derived its authority directly from the B. N. A. Act; and each was circumscribed in its sphere.

Secondly as regards the Land.

(*a*) Each province was invested with its territorial *dominium* under the Crown over all land within the boundary; and

(*b*) The Dominion, as a consequence, was deprived of all land except what it might have under section 108 or acquire from the provinces under section 117 for the purposes of public works and undertakings reposed in its exclusive control by the B. N. A. Act, 1867.

This was the immediate and intended effect of Confederation on Ontario, Quebec, New Brunswick and Nova Scotia; and it approximated the provinces of Canada nearer to Sovereign States than it did the Dominion to a Sovereign Nation.

The ultimate aim was that the Dominion as thus constituted should expand over and embrace the whole of British North America, similarly divided into provinces all of perfect equality in status and rights.

In accordance with this aim provision was made by the B. N. A. Act, 1867, to admit into the Union, Newfoundland, Prince Edward Island and British Columbia, upon addresses from their respective legislatures, and to similarly admit into the Union Rupert's

Land and the N.-W. Territory upon an address from the Parliament of Canada—all upon such terms as should be stated in the respective addresses and approved by the Imperial Government; and all "subject to the provisions of this Act."

Rupert's Land and the North-West Territory were the first to enter the Union under this provision.

It is certain there had been no intention of the Imperial Government to admit them to the Dominion till they had been to some extent, at least, fitted for the status. It had been, and, if the Union had not interposed, it would still have continued to be, the duty of the Imperial Government to develop them and invest them with a colonial status and equipment just as had been done for the colonies East and West of them; and then to give them the choice of entering or remaining outside the Dominion.

Canada, however, saw the possibility of a rival Western Dominion; and almost the certainty of British Columbia entering it unless she was induced first to enter Canada by acceding to her stipulation for a transcontinental railway. Canada eagerly desired to avert such a catastrophe. The accession of Rupert's Land and the North-West Territories to the Union was essential to her design. Vehemently, therefore, and persistently she urged that "it would conduce to the advantage of the Empire if the Dominion of Canada, constituted under the provisions of the B. N. A. Act, 1867, were extended westward to the Pacific Ocean."

Entry of the Territories to the Union became inevitable though both Governments realized it was entirely premature.

In acceding, however, to the Canadian request, the Imperial Government stipulated, as a *sine qua non,* that there should be an adjustment between the two Governments of the responsibilities in regard to the Territories during their adolescence; and Canada, recognizing the great object to be attained both in her present progress and in her future aggrandizement,

promptly agreed to undertake the obligations which otherwise would have fallen on the Imperial Government.

This undertaking, as well as the purposes of Canada regarding the Territories, were set out in an address presented by the Parliament of Canada, and thereupon an Order in Council pursuant to the B. N. A. Act, 1867, and the Rupert's Land Act, 1868, was made on the 23rd of June, 1870, which admitted Rupert's Land and the North-West Territories to the Dominion. It contained also, in conjunction with Rupert's Land Act, the powers conferred upon the Parliament of Canada for performing the obligations so undertaken.

These will be discussed hereafter.

That Canada was then in a hurry, is seen from the fact that it had passed an Act constituting Manitoba a province, before the Territories themselves were admitted to the Union. But the Act was only to come into operation, *ipso facto,* with the issue of the Order in Council admitting them.

This impetuosity resulted in trouble. It was at once seen that the Parliament of Canada had no authority, express or implied, to organize or establish provinces. Manitoba, as a consequence, was in a precarious position constitutionally.

To validate what had been done, the B. N. A. Act, 1871, was passed.

It enacts:—

"That the Parliament of Canada may from time to time establish new provinces in any territories forming, for the time being, part of the Dominion of Canada . . . and may at the time of such establishment make provision for the constitution and administration of any such province and for the passing of laws for the peace, order and good government of such province and for its representation in the said Parliament."

And also, "that the Parliament of Canada may from time to time make provision for the administra-

tion, peace, order and good government of any territory not included in any Province."

From this time till 1905 all the Territories outside Manitoba, were governed by the Dominion, and after some temporizing expedients a legislature evolved very much akin in external form, at least, to the Provincial Legislatures under the B. N. A. Act. It was, however, more limited, and was of course created by, and subsidiary to, the Dominion Parliament.

I do not question this at present.

In 1905, however, two other Provincial areas were demarcated in the Territories and the Dominion Parliament by two concurrent Acts, which recited its powers to establish provinces as I have set out above, and that it was expedient to exercise them, enacted that "the territory comprised within" the boundaries of each of the demarcated areas "is hereby established as a province of the Dominion of Canada to be called and known as"—one the Province of Saskatchewan, and the other the Province of Alberta.

Mutatis mutandis the two Acts are identical.

Each of them has a section:—

" The provisions of the B. N. A. Act, 1867 to 1886, shall apply to the New Province in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion as if the said Province had been one of the Provinces originally united, except in so far as varied by this Act."

And another section:

"All Crown lands, mines and minerals and royalties incident thereto . . . shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada."

The Manitoba Act, 1870, contains corresponding sections.

These are the historic facts stated as concisely as is consistent with clearness.

The section relating to the lands of these new provinces is the one with which this exposition is con-

cerned. With a Titanic sweep it disjoints the constitution of the Dominion of Canada created by the B. N. A. Act, 1867, by:

(*a*) Placing the new provinces in a position of inequality with the other provinces.
(*b*) Appropriating their land to the Dominion.
(*c*) Depleting them of their legislative authority over provincial land.

The land, therefore, and the authority of the Parliament of Canada over it, lie at the root of the problem.

Henceforth in this article I will include both Rupert's Land and the North-West Territory in the word "Territories"; and I shall proceed in this order:—

1. Right to the Land.
   (*a*) By the Territories.
   (*b*) By the Provinces.

2. Legislative Authority of Parliament of Canada.
   (*a*) Over the Territories.
   (*b*) Over the Provinces.

II. Right to the Land.

(*a*) *By the Territories.*

Prior to their admission into the Dominion, the Territories were vested in the Crown in right of the United Kingdom whose Parliament controlled them even to the extent of alienating them.

At their admission there was neither Transfer, Surrender nor other transmission to the Dominion of Canada of the title of the Crown, the right of the United Kingdom, or the authority of the Imperial Parliament.

The Dominion, therefore, never was invested with any right, title or beneficial interest in the Territories.

The Territories were admitted to the Dominion as constituted under the B. N. A. Act, 1867. Under that Act, the entities among them owned all the land of Canada; and the Dominion had no land nor could it acquire any, except from the provinces as already stated.

If the Imperial Parliament had merely intended to hand over, or if the Dominion had merely sought to get, the Territories as Dominion land or as a *Res Commune* of the then constituent provinces of Canada, the B. N. A. Act, 1867, would have required such fundamental changes as would have upset the old constitution and replaced it with a new.

That certainly was never the intent; for the Territories were admitted to the Union by the conjoint action of the Imperial and Dominion Governments expressly for the purpose of "extending the Dominion as constituted under the B. N. A. Act, 1867, westward to the Pacific coast."

This Act completely excludes Dominion land in any shape or form, except as stated; and the Dominion under it had neither capacity to own nor to control the Territories.

The Territories were admitted into the Dominion in 1870 by words identical with those used in admitting to it in 1871 British Columbia, and in 1873, Prince Edward Island. The Territories were not fused with or absorbed into the Dominion, and they did not become a *Res Commune* of the other provinces, nor were they constituted Dominion lands. They formed, just as did British Columbia and Prince Edward Island when admitted subsequently, two separate and distinct entities of the Dominion of Canada, and unless as such entities they had their land and the *dominium* over it these results follow:

(*a*) They still continued after the Union to be vested in the Crown in right of the United Kingdom; and

(*b*) They were admitted to the Union subject to an Act which ignores them and has not even till this day a provision relating to them.

This is a *reductio ad absurdum* with a vengeance!

The constitutional fact is that the Order in Council admitting the Territories made in 1870 in pursuance of the B. N. A. Act, 1867, and the Rupert's Land Act, 1868, operated:

(*a*) To establish two new Entities of the Dominion of Canada.

(*b*) To surrender or transmit to these Entities the right of the United Kingdom in their land; and

(*c*) To change the title of the Crown accordingly.

So long as, and in so far as, they remained integrities of the Union this condition continued. But the policy of dividing them into Provinces began almost instantly.

(*b*) *By the New Provinces.*

The power to constitute new provinces is conferred upon the Parliament of Canada by the B. N. A. Act, 1871, thus: "To establish new provinces in any Territory forming for the time being part of the Dominion of Canada."

This phrase itself—"forming part of the Dominion"—recognizes the status in the Union of the Entities formed by the Territories; for every province is only a part of the Dominion for the purpose and to the extent set out in the B. N. A. Act, 1867, but not otherwise. There is no fusion of territory; only of rights. The power authorized the Parliament of Canada to carve out or delimit an area of the Territories; to establish it, by enactment, a province of Canada; and thereupon this new creation became a new Entity of the Dominion invested, as such, with its status and rights under the B. N. A. Act, 1867.

The time for exercising this power was discretionary with the Parliament of Canada, but the Act itself

was perfunctory. It could not attach any terms or conditions, and it could not work itself out piece meal by first conceding the right of self-government and reserving the land for a future dole. It was a power when exercised, and an Act when done, that were complete, indivisible and irrevocable, and their effects instantly find their expression in, and control by, the B. N. A. Act, 1867.

The land adhered to the new Province by Succession from the larger entity out of which it was carved.

It is said, however, that the Parliament of Canada could establish a Province without its land. There are but two kinds of Province—a Province which is only a geographical name for a territorial division of a country whose government is entirely outside the division and centred elsewhere, and a Province which is essentially a self-governing colony.

The province under the B. N. A. Act, 1867, is a hybrid. So far as the Parliament of Canada has any control over its affairs, the province belongs to the first class. Its government is centred outside itself.

But so far as it is self-governed it belongs to the latter class. In both aspects its limits and rights are defined by the B. N. A. Act, 1867. One of its rights is the *dominium* under the Crown over its own land. Now this is the Province, and the only species of Province contemplated by the B. N. A. Act, 1867, or authorized to be established by the B. N. A. Act, 1871. The Parliament of Canada was authorized to construct no other. If it has constructed anything else, it is a monstrosity, and a province of Canada only in name. It is outside the provisions of the B. N. A. Act, 1867, and the Dominion having created it, is its Sovereign.

This is another *reductio ad absurdum.*

The Provinces of Canada are essentially colonies, except that they have relegated certain matters of common interest and right to a united body—The Dominion of Canada. Hence they are called not colonies, but Provinces. But in this way, "Province," under

the B. N. A. Act, is a technical term, and wherever it is used it applies to the old as well as the new Provinces of Canada.

They are certainly self-governing Entities; and it is a constitutional fact that every such entity, whether it be called a Colony, a Province or a Nation, is invested with the *territorial dominium* over its land. A nation has the *Dominium Directum*, and a province or colony its *Dominium Utile* immediately under its Sovereign. Without this, neither nation, colony nor other self-governing entity can exist. Any of them that parts with it, disappears as a political entity, and becomes either fused with, or subordinate to, some other Sovereign authority.

The new provinces therefore have their land by virtue of their status. It is indispensable.

Then again section 117 of the B. N. A. Act, 1867, says: "the several Provinces shall retain all their respective public property."

This applies *in limine* to the Old Provinces. It applies also to the new. To create the new an area had to be demarcated in the Territories, and by statutory Enactment, established as a Province of Canada. The land itself in each case was the Province. For a moment—no matter how short and even while the paternal Government had its hand stretched out to snatch back what it pretended to give—that land was the province, the "public property" of the province. And the B.N.A. Act, 1867, says it shall be "Retained."

Besides this section 117, section 109 of the B. N. A. Act, 1867, is even more elaborate and emphatic; and it applies to the new Provinces, *mutatis mutandis*, the same as it does to those named in it. This is not only the interpretation of the Act itself, but it is essential to preserve that equality among all the Provinces which is the radical fundamental of the Confederation in its formation, and no less emphatically so in its expansion—"the extension of the Dominion 'as constituted' under the B. N. A. Act, 1867, westward to the Pacific."

By Imperial statutory enactment, therefore, the new province has its land.

The power of the Parliament of Canada to Enact the contrary is discussed later.

III. Legislative Powers of Parliament.

(*a*) *Over the Territories.*

Under the B. N. A. Act, 1867, when the Territories became part of the Dominion as stated, the Parliament of Canada was invested with the same legislative authority over them, as over the other entities or provinces. Under that Act it had no other authority whatever, and it had emphatically none over their land, for that was exclusively reposed in the Provincial Legislatures.

The Territories had, however, as stated, no Legislature, and therefore though they had the right, they had not the machinery to exercise it.

Consequently the Parliament of Canada, being entirely responsible for forcing prematurely the Territories into this anomalous position, was charged with a Trust obligation by the Imperial Parliament to supply as far as possible the place of this non-existent Legislature, and the powers to perform that obligation were conferred on the Parliament of Canada, not by an amendment of the B. N. A. Act, 1867, but by the Rupert's Land Act, 1868, and the Order in Council of the 23rd of June, 1870—two strictly territorial measures or instruments.

This was deliberately done so that the powers thus conferred could not operate as, or be mistaken for, an expansion of the constitutional legislative authority of the Parliament of Canada over its constituent entities, under the B. N. A. Act, 1867. The powers thus given were an entirely new function limited in time, area, and purposes. They were conferred to carry out a trust obligation, and their objects and purposes are, as they are in all cases of trust or delegated functions, of radical importance in ascertaining the extent of

the powers. The powers always coterminise and harmonize with the purposes—never transcend them, however wide and general the language of the powers may be.

Happily the powers in this case were preceded by an address to the Imperial Government setting out the objects, as well as the purposes for which the powers were sought; and these objects and purposes were specifically made the "terms and conditions" upon which the Territories were admitted to the Dominion and the auxiliary Trust legislative powers conferred on the Parliament of Canada.

These objects and purposes are:—

(*a*) "That it would conduce to the advantage of the whole Empire if the Dominion of Canada constituted under the provisions of the B. N. A. Act, 1867, were extended westward to the Pacific coast."

(*b*) "That the colonization of the fertile lands and the development of the mineral wealth of the North-West, and 'the extension of commercial intercourse . . . from the Atlantic to the Pacific are alike dependent on the establishment of a stable Government for the maintenance of law and order in the North-West Territories."

(*c*) "That the welfare of a sparse and widely scattered population . . . already inhabiting these remote and unorganized territories, would be materially enhanced by the formation therein of political institutions bearing analogy as far as circumstances will admit to those which exist in the several Provinces of the Dominion."

And the powers granted for these purposes are:

(1) Under Rupert's Land Act, 1868—

"To make, ordain and establish within the land and territory so admitted . . . all such laws, institutions and ordinances and to constitute

such Courts . . . as may be necessary for the peace, order and good government of Her Majesty's subjects and others therein."

(2) Under the Order in Council of 23rd of June, 1870:

"To legislate for the future welfare and good government of the said Territory."

Now there is nothing in these powers when read in conjunction with the purposes but what a legislature for the Territories, corresponding with a Provincial Legislature, might have done or carried out if it had existed.

"The colonization of fertile lands;" the "development of mineral wealth;" "the establishment of a stable Government for the maintenance of law and order;"—all in the Territories; and "the formation therein of political institutions analogous . . . to those which exist in the several Provinces of the Dominion;" and "to legislate for the future welfare and good government of the said territory."

These are all matters within the authority of all the Provinces of Canada, except perhaps the formation of the political institutions. If they, however, cannot form institutions, they can remould them, and out of the old material form them anew, so that, *mutatis mutandis,* this authority is the authority of every Provincial Legislature.

For the Territories it was, *pro tempore,* exercised by the Parliament of Canada in the trust capacity, and this certainly did not serve to expand but to confine it.

A Provincial Legislature could not alienate, *en bloc,* its land and its territorial *dominium* over it, and still retain its status; and there is nothing here to authorize the Parliament of Canada to alienate the land of the Territories, or to appropriate it as a *res commune* of the Dominion, or to convert it to the use of the Dominion.

This nefarious thing, however, it did or attempted to do by its first Dominion Land Act, 1872.

Rupert's Land and the North-West Territories are therein defined as "Dominion Land," and laws are made relating to their sale and management. Ever since they have been dealt with as Dominion land, and they are contributories to the general revenue of Canada.

This is monstrous.

This enactment, be it remembered, is not made by any authority of Parliament under the B. N. A. Act, 1867. It is made under its Trust Powers conferred by Rupert's Land Act and the Order in Council. It is a Territorial, and not a Dominion Enactment. It is an act of spoliation; and the Parliament of Canada could not, any more than could a trustee in any affair of ordinary life, use its trust powers to appropriate as its own the property of its *Cestui Que Trust*, even under the pharisaical pretext that the plunderous act was in the highest interest of the beneficiary.

The Parliament of Canada must have passed this nefarious enactment oblivious alike of the B. N. A. Act, 1867, and of the patriotic, paternal, and pathetic proposals formulated by itself in order to get the Territories into the Union, and in reliance on which it was invested with the trust powers of the Rupert's Land Act, and the Order in Council—powers which instantly it prostituted to accomplish an act of plunder against an undeveloped constituent of the Dominion to which it stood *in loco parentis*.

Neither under the B. N. A. Act, 1867, nor under the legislative powers reposed in the Parliament of Canada by Rupert's Land Act, and the Order in Council, was the Dominion Land Act, 1872, nor are any of its successors, legal or effectual to transfer or transform the lands of the Territories into Dominion lands.

(*b*) *Over the Provinces.*

New provinces within the Territories are established by the Parliament of Canada under a power conferred upon it by the B. N. A. Act, 1871.

This is an addition to, or an amendment of the B. N. A. Act, 1867; and this is a significant fact. It shows the keen conception the Imperial Government had of the difference between the high functions of the Parliament of Canada under its constitution, and the subsidiary Trust functions it had over the Territories under Rupert's Land Act, 1868, and the Order in Council of 23rd June, 1870.

The Parliament of Canada constituted Manitoba, as we have seen, under its subsidiary Trust functions, and the Imperial Parliament, when it saw what an egregious error had been made, promptly rectified it, not by augmenting the subsidiary Trust functions, but by conferring the right to establish new provinces on the Parliament of Canada in its constitutional capacity.

So that the new provinces established in the Territories are constitutional provinces. They are, the moment they arise, instantly free of the trust authority of the Parliament of Canada under Rupert's' Land Act and Order in Council; and they have their status and rights under the B. N. A. Act, 1867, quite independent of the Parliament of Canada which could neither augment nor deplete them, nor yet withhold them.

One of the exclusive rights of provinces under that Act is "to make laws in relation to . . . the management and sale of public lands belonging to the province."

They have never been divested of that right. It has fallen into abeyance because since 1872 it has been accepted as a fact that all of Rupert's Land and the North-West Territories are Dominion lands, and that the Parliament of Canada alone has legislative control over them.

I have shown the utter falsity and illegality of this preposterous claim.

The only Act that could give any countenance to this is the Dominion Land Act, 1872, and it does not even pretend to transfer the Territories to the Dominion. Nor does it enact that they are "Dominion

land." It stops at designating them as "Dominion land."

This is not the enactment of a law by a Parliament. It is merely the utterance of an Oracle; and, *vanitas vanitatum*, quite as effectual. It no more changes the right of the ownership of the Territories than does the dubbing of a white horse black, change its color, or than does the writing of the name of a thief on a purse he has stolen make it his own.

It has been a misnomer all through the years to call the Territories "Dominion lands."

The provinces are part of those lands; and each province has its own land in the various rights I have previously set out.

The Parliament of Canada cannot divest the new provinces of those rights any more than it could the old provinces of Ontario and Quebec.

What then is the effect of the section in the various Acts establishing the new provinces that

> "all Crown lands, mines, minerals and royalties . . . shall continue to be vested in the Crown and administered by the Government of Canada for the purpose of Canada?"

It is simply *nullitas nullitatum*.

It is devoid of any species of authority.

It is contrary to the specific enactments of the B. N. A. Act, 1867.

It is repugnant to the whole scheme of the Confederation of the Dominion of Canada.

It is in direct violation of the trust powers reposed in the Parliament of Canada when the Territories were admitted to the Union expressly to "extend the Dominion as constituted under the B. N. A. Act, 1867, westward to the Pacific Ocean."

It is an attempt to capture the beneficial interest of the province in its own land, for the Dominion of Canada.

It is an attempt, without specifically changing the title of the Crown and the right of the province or

even pretending to do so, to pervert or divert the beneficial interest of the province to the purposes of the Dominion by interposing a Suzerain in the shape of the Government of Canada over the lands of the province.

It is an atrocious scheme.

But cunningly as it has been laid out, the trickster's skill has failed to perfect the device. No authority is pretended to be conferred by the Act upon the Parliament of Canada to make laws relating to these lands. And nowhere is there any such authority—certainly not under the B. N. A. Act, 1867, and more certainly still not under Rupert's Land Act, and the Order in Council from the powers of which the provinces are emancipated.

The powers of the Provincial Legislatures over provincial lands are in full force, in spite of the enactment, and notwithstanding the fact that through the obsession of the public mind by this dastardly imposition, they have for many years been in abeyance.

Every enactment of the Parliament of Canada, and every administrative Act relating to provincial lands, since the provinces were established, is utterly null and void.

What about all the titles granted pursuant to those Acts, or granted in any way by the Dominion Government?

I leave that till another time.

IV. Conclusion.

I submit now that I have clearly proved:—

(1) That Rupert's Land and the North-West Territories are not and never were the property of the Dominion or "Dominion land."

(2) That the title to them passed direct from the United Kingdom to the two entities which they constituted in the Dominion of Canada.

(3) That this title again, as Provinces were carved out, became vested in the Provinces;

(*a*) By the Constitution.

(*b*) By their status.

(*c*) By Imperial enactment.

(4) That under the B. N. A. Act, 1867, the Dominion had no authority over the land of these Territories any more than over the land of the provinces, except that by the B. N. A. Act, 1871, it was given an authority to divide them into areas and establish them as provinces of perfect equality with the other Provinces.

(5) That pending the attainment of this, and to facilitate and prepare for it, the Parliament of Canada was invested with certain Trust Powers of a limited legislative and administrative character.

(6) That these trust powers were in the interest of the Territories themselves in the same way as are the authorities of Provincial Legislatures.

(7) That these Trust Powers never extended to or affected the title of the Crown or the right of the Territories; and that it was in abuse of these powers the Parliament of Canada by a series of Enactments, beginning with the Dominion Land Act, 1872, converted or perverted the Territories into "Dominion land," by merely describing them as such and administering them for the purposes of Canada.

(8) That these Dominion Land Acts are as regards the Territories:

(*a*) Fraudulent and void.

(*b*) *Ultra* all constitutional authority.

(*c*) In violation of Trust Powers.

(9) That the sections of the Acts establishing Manitoba, Saskatchewan and Alberta which divest those provinces of their land are:

(*a*) Utterly beyond the competence of the Parliament of Canada.

(*b*) Repugnant to the Constitution.

(*c*) In direct antagonism to specific enactments in the B. N. A. Act, 1867.

(*d*) In direct violation of the purposes for which the Territories entered the Union.

(10) That for the reasons stated, the sections named are *Nullitas Nullitatum,* and the lands and other Crown rights of each Province belong to the Province in spite of the contrary Enactment of the Parliament of Canada.

(11) That the legislative rights of the provinces over their lands under the B. N. A. Act, 1867, are in their integrity and full force in spite of the fact that so far they have lain in abeyance through misconceived credulity in the rectitude of the contrary claim advanced and persisted in, wrongfully, for years by the Parliament of Canada.

It is astounding that this monstrous device should have gone unexposed for so many years. It is a Governmental crime, which becomes positively loathsome when we reflect that it violates every one of the superb principles of justice, freedom and right which generated the Old colonies and evolved the Dominion of Canada as a herald, and only as a herald, of a splendid and sovereign Nation.

If at any time within the past two hundred years Great Britain or the United Kingdom had attempted to do with its colonies what the Dominion of Canada with its own constituents has doggedly and designedly done, the people concerned would have instantly revolted and hurled off a yoke at once abominable, tyrannic and extortionate: And let us reflect that while the Old Country had to design her propitious course through the mists of prevailing autocracy and oppression, the Dominion of Canada was born in the full effulgence of freedom, only fifty years or so ago. Yet Canada has reacted and recoiled, and substituted an anachronism of the feudal ages for the clean conceptions of the twentieth century in all matters of independent democratic government. It has not shrunk from protruding and interposing a Suzerain into the Confederation of Canada! And even a Grand Vizier!

Odious abominations of feudalism and autocracy!!

The course is clear now to the new provinces—Unitedly to rise and shake off the monstrous thing; and then compel its creator—the Parliament of Canada—to annihilate it.

There is but one word more. This is an article on our Constitution. It is not concerned with politics at all. But it has been said that when the provinces of Alberta and Saskatchewan were formed there was a compact made that the Dominion would retain the lands. I have shown clearly and conclusively the Dominion never had the lands, either to give or to withhold or to appropriate. But even if it had or supposed that it had, the law of the land, the constitution of the country, and the people of Provinces concerned demand an answer to this: Who were the parties to the alleged compact? It takes two parties to make a compact; but who was the second party to the compact by which the rights of the Provinces were bartered away to the Dominion of Canada, and the people of the Provinces despoiled?

The Provinces were non-existent. There was only the Dominion. The Parliament of Canada as a ruthless and avaricious autocrat might have said: "We will not exercise our discretion to establish you as provinces except upon the condition that you surrender your rights to the land in favour of the Dominion." An assent, extorted in this way, would be one of criminal duress. It would be worthless.

But quite apart from this, the Constitution which gives to each Province its land, and the exclusive right to legislate for it, could not without a revolution be waived or violated even by a unanimous vote of the entire people both of the provinces concerned and of the Dominion. Instead of a vote dissent and dissatisfaction have dogged the dastardly deed through all its malign manipulations.

Within the inner conclaves such a compact may have been made, but it was wholly abortive, and if made it stands as a monument to the eternal shame of its fabricators.

I have done. *Honi soit qui mal y pense.*

Regina, July, 1919.

OUR BOGUS DOMINION LAND CODE.*

The Dominion Land Acts are enactments of the Parliament of Canada respecting "Public Lands of the Dominion."

By the first of these Acts in 1872, these lands are defined as "Lands included in Manitoba and the North West Territories"; and by the last of these Acts in 1908, as (inter alia) "the Lands of the Dominion of Canada in the Provinces of Manitoba, Saskatchewan and Alberta and in the North West Territories."

The legality of these Acts depends partly on the Title of the Dominion to the Lands which for convenience I will call "the Territories"; and partly on the competence of the Parliament of Canada to enact them.

The Dominion has never condescended to reveal a title; it has simply through the Parliament of Canada enacted these Land Acts on an assumption of ownership, reflected in this deft definition that the Territories are "Public Lands of the Dominion." We know of no other Title.

This method of asserting a Title is autocratic. But late though it may be, the future of the West is before it; and both the Dominion's Title and Parliament's capacity are now challenged and in dispute.

In giving reasons against both, I shall not falter in removing the masque and vizor with which the Parliament of Canada has dominated the Territories for well nigh fifty years.

The scheme of Confederation, as embodied in the B.N.A. Act 1867, is a Union of independent entities for Governmental purposes only, and not for achieving a solidified Territorial Unity. To avoid such a Unity, each entity of the Dominion is invested with its own land and natural resources, together with exclusive

* Article in *Canadian Law Times*, September, 1919.

legislative authority over them. This leaves the Dominion *ex-necessitate* a landless creation of the Act with the exception of certain public works and property enumerated in a schedule and allotted to the Dominion by Section 108, and what it might acquire under section 117 from the Provinces.

The Dominion has no constitutional capacity to hold, and consequently it cannot acquire a title to, any other land or property.

Have the Territories been so acquired by the Dominion?

The constitutional limitation just stated throws the presumption of the ownership of the Territories completely against the Dominion. An autocratic assumption is not enough; it must prove all it claims; for, if its ownership of the Territories is affirmed, it means that the Constitution set up for us by the B.N.A. Act, in 1867 was demolished at one stroke by a mere definition in a Land Act of the Parliament of Canada in 1872, and that we have been living in a " Fool's Paradise " ever since.

By this transformation, if it is real and not a mere illusion, the Dominion, instead of being a landless entity as the B.N.A. Act designed it to be, owns in defiance of that Act, the equivalent of one half of the territorial area of the confederated Dominion of Canada.

And it is not the Imperial Parliament but the Parliament of Canada that has forged—I use the word in its civil sense—the constitution under which we live.

But I say the proof of this—the competence of the Parliament of Canada to accomplish this—lies on the Dominion.

I do not stop here, however. I proceed to prove the converse of the Dominion claim so far as it is recorded.

The Dominion may, of course, spring on us a Transfer of these Territories or an independent Charter to hold them from the Imperial Government

which so far has never been revealed. But until revealed we are entitled to assume it is *non est;* for the Dominion cannot resort to the legal fiction of a ' lost grant ' in the face of the formidable documentary proofs that I array against its title.

The Dominion, certainly, did not get the Territories when the Confederation was made in 1867. They were admitted to it in 1870 by the Imperial Government under section 146 of the B.N.A. Act, which applies to them equally with British Columbia and Prince Edward Island; and the Order in Council effecting their admission explicitly states that they " shall be admitted into and become part of the Dominion of Canada," upon certain terms set out in an Address of the Parliament of Canada which I discuss later.

Neither the Act, nor Order in Council, nor the terms of admission have the slightest suggestion or indication that the Territories were intended to be admitted or used as " Public Lands," or as " Lands set apart for general public purposes." Even if there had been such an intention on the part of either the Imperial or Canadian Government at the time, the Territories could not have been so admitted to the Dominion without first remoulding and recasting the fabric and framework of the B.N.A. Act, 1867.

But as a fact they were not so admitted; and their admission in the words set out constituted them, just as precisely identical words, afterwards used, constituted British Columbia in 1871 and Prince Edward Island in 1873, separate integers and distinct entities of the Dominion; and as such the B.N.A. Act allocated to them all alike their Land and Natural Resources except what might be appropriated to the Dominion or acquired by it under section 108 or section 117 as already stated.

The whole Territories could not fall within either of these excepting sections; and the only clause of either of them under which any part of the Territories could fall is in item 10 of the Third Schedule to the B.N.A. Act, containing a list of Provincial Property

appropriated to the Dominion by section 108 thus: "Land set apart for general public purposes." This clause, however, is strictly *ejusdem generis* not only with the other clauses or words of item 10, but also with all the other items of this Schedule which applies to such matters as canals, harbours, military roads, customs, post offices, ordnance property, armouries, drill sheds, etcetera. The meaning and extent of this appropriation are obvious. It could not possibly embrace two entities equivalent in area to the half of the Dominion. But quite irrespective of this "Land set apart for general public purposes" under this item 10, or under any part of section 108, requires to be "set apart" in the first instance, by the Province or land-owning Entity, before it could pass to the Dominion. It could not be "set apart" by the Dominion because "setting apart" implies or involves the ownership or dominium. This the Dominion of Canada never possessed.

It is quite certain the Territories, after becoming Entities of the Confederation, never set themselves apart for "general public purposes" under section 108, so as to effect their own transfer to the Dominion and the extinction of the status and rights with which, as such entities, they were invested. Even if they had desired to do this, they could not have effected it, any more than could Ontario or any of the other Provinces, or any more than could the whole Provinces by concerted action, thus transfer their lands "for general public purposes" to the Dominion. Such a proceeding would overturn the whole constitutional fabric, and especially that which is most cherished and most valuable in the Confederation scheme—a landless Dominion constituted of land-owning Entities. And besides this *non possumus* such a Transfer of the Territories would have violated the express purpose, as set out in the Address to the Sovereign, discussed later on, for which they were admitted to the Dominion.

British Columbia did, no doubt, under this Section 108, set apart and appropriate to general public purposes, the Railway Belt. But so fundamental in the constitution is the right of ownership reposed in the Entities that even the enactment of the B.C. Legislature, granting the land to the Dominion, has been construed by the Privy Council to mean no more than an alienation of the revenue derived from a first sale, or realization of it, after which the Proprietary Right and Legislative Authority of the Province reverted to it in full force.

If, then, the Territories did not, and could not, set themselves apart and transfer their land to the Dominion for " general public purposes " under Section 108 of the B.N.A. Act, had the Parliament of Canada authority to perform the bountiful, but most unconstitutional, trick for them?

Assuredly not. But, unlike the Dominion Parliament, I am not an Oracle and must avouch my utterance with reasons.

Now at this juncture it is necessary to explain that the Parliament of Canada had two capacities in relation to the Territories, adherent to which were two sets of Powers.

The first which I will call its " Constitutional Capacity" was what is conferred by Section 91 of the B.N.A. Act, 1867, over every Entity alike of all the Dominion of Canada. It does not extend to their land and natural resources; and under it the Parliament of Canada had no authority whatever to touch the Territories and it could not have appropriated them under Section 108 of the B.N.A. Act.

The second capacity which I will call its " Territorial Trust Capacity " became necessary when the Parliament of Canada prevailed upon the Imperial Government to admit the Territories to the Dominion as already described. The Imperial Government, though favourable to their ultimate admission, had been reluctant to prematurely place them in a position of responsible self-government before they had been

fully fitted, just as had been the Colonies east and west of them, for the exercise of the rights which, as Entities of the Dominion, would instantly accrue to them. They were then wholy unequipped. Canada, however, was urgent and even impetuous; for she foresaw and apprehended disaster to her cherished scheme of an Ocean to Ocean Dominion, in the possible rise of a rival Western Dominion consisting of the Territories and British Columbia. She insisted, almost as a matter of life and death, that the Territories must then enter the Dominion; and to meet and remove all scruple or difficulty on the part of the Imperial Government, owing to the fact that the Territories had no local legislature nor anything in the nature of it, the Parliament of Canada proposed to relieve the Imperial Government of what it deemed its duty to the Territories, and to undertake and carry out in them all the reforms and improvements which were desirable and necessary for fully fitting them to assume their own autonomous rights as Entities of the Dominion.

This was the basis of a Governmental Compact.

As a *sine qua non* to its acquiescence, the Imperial Government required Canada to embody in an Address to the Sovereign, asking for the admission of the Territories to the Dominion:

(*a*) The purposes for which it designed the Territories.

(*b*) The developments and improvements proposed for them.

(*c*) The undertaking of the Parliament of Canada to assume the Governmental obligations of these matters.

The Address accordingly sets out:

(*a*) That it would promote the prosperity of the Canadian people and conduce to the advantage of the whole Empire, if the Dominion of Canada constituted under the provisions of the B.N.A. Act, 1867, were extended westward to the shores of the Pacific Ocean.

(*b*) That the colonization of the fertile lands . . . the development of the mineral wealth . . . . and the extension of commercial intercourse . . . from the Atlantic to the Pacific, are alike dependent on the establishment of a staple government for the maintenance of law and order in the North West Territories.

(*c*) That the welfare of the population . . . would be materially enhanced by the formation therein of political institutions bearing analogy . . . to those which exist in the several provinces of this Dominion.

Next it recites Section 146 of the B.N.A. Act, 1867.

Then it asks the Imperial Government:

(*a*) To unite Rupert's Land and the North West Territory with this Dominion.

(*b*) To grant to the Parliament of Canada authority to legislate for their future welfare and good government.

And it concludes:

"We most humbly express to your Majesty that we are willing to assume the duties and obligations of government and legislation as regards these Territories."

Upon these terms and conditions the Territories were admitted into and made part of the Dominion subject to the B.N.A. Act 1867.

And the powers conferred upon the Parliament of Canada for carrying out these purposes are:—

1st, By Rupert's Land Act, 1868, thus:—

"It shall be lawful for the Parliament of Canada to make, ordain and establish within the land and territory so admitted . . all such laws, institutions and ordinances and to constitute such Courts and officers as may be necessary for the peace, order and good government of Her Majesty's subjects and others therein."

2nd, By Order in Council of 23rd of June, 1870, thus:—

"That the Parliament of Canada shall have full power and authority to legislate for the future welfare and good government of the said Territory."

Now, then, as the result of this Governmental Compact the Parliament of Canada acquired its "Territorial Trust Capacity" with the powers just mentioned, as pertinent to it. In this capacity the Parliament of Canada was not only in a Trust relationship to the Imperial Government, but it stood *In Loco Parentis* to the Territories themselves pending their adolescence as self-governing entities of the Dominion.

It is obvious that what was to be done for the Territories by the Parliament of Canada, in this capacity, strictly pertained to, and normally was within the sphere of, a Local or Colonial Government; and the undertaking in the Address "to assume the duties and obligations of Government and legislation as regards these Territories" was nothing more, and nothing other, than an undertaking to supply the place of a Legislature for the Territories for carrying out in them the reforms and improvements specified in the Address.

And when accepted and the Territories admitted, this undertaking became a Trust obligation on the Parliament of Canada while the powers conferred by Rupert's Land Act and the Order in Council were merely correlative powers to implement the obligation. Though they were delegated to the Parliament of Canada at its own request, they were very restricted; for their general words were particularized by the purposes for the accomplishment of which they were given.

They could not be expanded beyond that. The appropriation of the Territories themselves was not one of the purposes, nor was it necessary to their achievement. It was, in fact, in direct antagonism to them; for we must remember that everything proposed to be done, and everything covered by the obligation, was subsidiary to the cardinal project set out in the Address of "extending westward to the Pacific Ocean, the Dominion of Canada as constituted under the B.N.A. Act, 1867." That was the *ne plus ultra*—the insuperable limitation.

The Parliament of Canada could not in this Territorial Trust Capacity and in virtue of its adherent powers, appropriate under the B.N.A. Act, 1867, the Territories as "Lands set apart for general public purposes" or as "Public Lands of the Dominion," even if it was untrammelled by the appendant Trust.

The powers in Rupert's Land Act were for definite structural works, governmental and material, and the power in the Order in Council was to legislate "for the future welfare and good government of the Territories," but strictly, nevertheless, in reference to those authorized works and the purposes set out in the Address. These powers neither divested the Territories of, nor invested the Dominion with, any proprietary right. And they did not impart to the Parliament of Canada any authority or power to alienate or transfer the Territories to the Dominion whether such a transfer were, or were not, for their " welfare and good government."

A Trustee with the most unlimited discretion of management or even of Sale cannot buy up the Trust Estate on any pretext. If the Trust is onerous, he can renounce it; but he cannot, on the plea that he has expended some money, or even that it is for the " welfare" of the *cestui que trust,* assume the absolute ownership of the Trust property. Nor could the Parliament of Canada utilize its fiduciary powers to acquire the territories for the Dominion, of which it is merely the legislative organ; or in other words, to enrich itself by annihilating the Beneficiary; for the complete appropriation of the Territories by or to the Dominion was nothing short of their complete annihilation as Entities.

Nor is this all. These powers were given for a distinctly opposite purpose; namely to preserve the Territories as Entities and to constitutionally develop them so that the Dominion " as constituted " under the B.N.A. Act, might be extended westward to the Pacific; and not that the Territories should be effaced, and the Dominion itself installed as the holder and

owner of one half the whole Territorial area of the Confederated Dominion as Public Land—*a Res Commune;* and a thing obnoxious to the whole scheme of Confederation.

This would violate everything fundamental in the Constitution; and more than that, if it were effectually done, it would destroy an Entity of the Dominion that the Imperial Parliament had created and established ! Without the ownership of their land, the Territories are merely the name of a geographical area of Canada subordinate to the Dominion.

But even if the Parliament of Canada had the power to do these things, it has never yet had the courage—or effrontery—to do them. The wish has no doubt been father to a wriggle, but it has failed to produce a direct enactment. Parliament has not in its Territorial Trust Capacity used, or tried to use, its legislative power avowedly to transfer the Territories to the Dominion as "Public Lands," or as "Lands set apart for general public purposes." But it has pretended to accomplish the feat by the magic of a circumlocutory definition in the Dominion Land Acts. These Acts, however, do not deal with the Territories, but with "Public Land of the Dominion" the ownership of which must have become, previously, vested in the Dominion.

How was it done?

It could not be done by Parliament in its Constitutional Capacity.

It could not be done in its Territorial Trust Capacity.

And could it be done by using conjointly the two Capacities? Assuredly not.

The two Capacities are in no way complementary of each other. The one is Dominion wide; and the other is Territorial. They are entirely independent; and though they are when rightly used not antagonistic, they immediately come into conflict; if anything is attempted to be done in contravention of the B.N.A. Act. They cannot be fused together any more than the

functions of Parliament and the functions of the Provincial Legislatures under the B.N.A. Act; and the fact that they are both *pro tempore,* vested in one Body—the Parliament of Canada—makes it all the more impossible to fuse them together so as to produce a colossal agglomerated power designed to render the Parliament of Canada omnipotent.

The two sets of Powers were given deliberately in two Capacities so that one might be a restraint on the other. If the Territories when admitted to the Confederation had been given or were intended to be given, to the Dominion as "Public Land" or "Land set apart for general public purposes" any powers that Parliament required to deal with them, would have been added to its constitutional legislative authority under Section 91 of the B.N.A. Act, 1867.

The coalescing of the powers would be tantamount to the creating for the Parliament of Canada of a new Function and a new Capacity. This, of course, could not be done. But even if the two were fused and coalesced, the hotchpotch power, thus evolved, could not authorize the Parliament of Canada to imperiously override the B.N.A. Act, 1867, by elevating the Dominion from a Landless Entity entrusted only with Governmental Functions, as that Act designed that it should be, into the place of a Territorial Sovereign over one half the Confederated area of Canada. This, however, the Dominion has aimed at; and this indeed it has to its own satisfaction at least attained, by ways and means unconstitutional, obnoxious, and vile, so far as the Territories are concerned.

Its death knell as a self-constituted Autocrat is now sounded.

Now I turn to the first Dominion Land Act, 1872, which is the prototype and progenitor of all the rest.

First I ask in which Capacity the Parliament of Canada passed this Act?

It is essential to know; for Acts passed in its Constitutional Capacity are Dominion Enactments; and

Acts passed in its Territorial Trust Capacity are Territorial Enactments.

Is this Act then a Dominion or a Territorial Enactment?

The Act truly is a mystery. It looks like, and reads like, a Dominion Enactment. But it shrinks from the touch as if it sought to conceal what a Statutory Enactment is designed to proclaim.

It begins with an assumption of ownership by the Dominion of the Territories, first by its title, "An Act respecting Public Lands of the Dominion," and next by its definition that the Territories are "Public Lands of the Dominion."

In its Territorial Trust Capacity, Parliament could not pass this Act.

I have already shown that the Territories were not admitted to the Dominion as Public Land. How then did they become so between their admission in 1870 and this Enactment in 1872?

The Act does not reveal this radical fact; and it has never since been revealed, nor has the Government or Parliament of Canada ever condescended to expound or explain the magical metamorphosis.

It cannot surely be pretended that the assumption of ownership as embodied in the title and definition is itself a Title or a Transfer of the Land. Yet this assuredly is all we have or know of the transformation. There is, of course, no direct avowal or enactment of Ownership by the Act; and it does seem as if this assumption were put forth in the sly, dubious way in which it appears in the title and definition of the Land Acts, so that if assailed a *bonhommie* explanation of the "true intent and meaning" of the Act would follow at the next Session of the House. If not assailed —and who in 1872 was there to assail it?—time, it was conjectured, would perfect the imposture by the influx of new fangled and gullible inhabitants surging in from all-the-world-over who would accept it as a truism that the Territories were Dominion Lands. Thus it

was designed that the assumption would first crystallize into a blind belief, and ultimately prevail as an orthodox Constitutional fact.

And thus indeed it has evolved, though the assumption in every fibre of it is false; and its roots and branches tangle and encumber our legal system and retard our development.

It is not an appropriation of the Territories to the Dominion under Section 108 of the N.B.A. Act, 1867.

It is not a Transfer of them; and it is not a Title to them.

It is an arrant usurpation; and the Title of an Usurper is the only Title of the Dominion of Canada to Rupert's Land and the North West Territories to-day. It has never had any other Title.

The conclusion, then, is inevitable that the Dominion Land Acts if enacted by Parliament:

(*a*) In its Constitutional Capacity are *Nullitas Nullitatum.*

(*b*) In its Territorial Trust Capacity are *Ultra Vires.*

Because:

(1) The Dominion never had any proprietary right in or title to the Territories as Public Land; and

(2) The Parliament of Canada had no pretence of right or authority to enact these Acts for the Territories as Dominion Land either under:

(*a*) The B.N.A. Act, 1867.
(*b*) Rupert's Land Act, 1868.
(*c*) Order in Council of 1870; or
(*d*) A hotchpotch of them all together.

So far I have discussed the Territories. But what I have said concerning the Dominion Land Acts as affecting them, is also applicable to the Provinces carved out of them, but with a thousand-fold accentuated and intensified force.

The Parliament of Canada was invested by the B.N.A. Act, 1871, with the power "to establish new

Provinces forming for the time being part of the Dominion of Canada, but not for the time being included in any Provinces thereof."

This power was an addition to its "Constitutional Capacity," and it was conferred not only in furtherance of the cardinal project for achieving which the Territories entered the Dominion,—the project of extending Westward to the Pacific, the Dominion "as constituted" under the B.N.A. Act,—but it was also the designed means by which the Parliament of Canada should, when it saw fit, terminate its territorial Trust Obligations.

After establishing a Province the Parliament of Canada had no further obligation under its undertaking, and no authority over the area included within the Provincial boundary, except what it had in its constitutional capacity under Section 91 of the B.N.A. Act, 1867. The establishment of the Province was the most perfunctory of all acts which the Parliament of Canada was empowered to do. It involved no more than demarcating an area and naming it a Province. The utterance of the name brought the B.N.A. Act into full operation; and the land and natural resources of the Provincial area became the property of the new Province with the power (*inter alia*) conferred upon the Provincial Legislature by Section 92 to "exclusively make Laws in relation to the management and sale of the Public Lands belonging to the Province."

The Parliament of Canada could not when establishing a Province either withhold the land or impair this power. All attempts to do so are simply unconstitutional and void; and all Dominion Land Acts, including the last one in 1908, passed subsequent to the establishment of any Province, dealing with the Provincial area as Dominion Land, are illegal, void, and crassly unconstitutional. All Government acts of the Dominion, including the granting of titles, are in the same category as the legislative Acts of Parliament.

Manitoba was formed in 1870, Saskatchewan and Alberta in 1905; and the Parliament of Canada in the

Acts constituting or establishing them has with euphonious irony dubbed them "Provinces of Canada." But so far from being that, they are, as they appear on the Statute Books, merely geographical areas of Land subordinate to the Dominion; for they are despoiled of their land, and their Legislatures are depleted of one of the most valued powers conferred upon them by the B.N.A. Act, 1867, both of which have been arrantly and autocratically arrogated to their August and Magnanimous Suzerain—the Dominion of Canada!

Long indeed have they been beguiled; but if they never knew the irrefutable truth before, they know it now; and unless they are cravens, longer they cannot be content to merely formulate platitudes on the "Equality of Provincial Rights," and eat the servile dust of degradation doled out to them by the Dominion, and the Parliament of Canada.

Delenda est Carthago.

Regina, August, 1919.